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June 11, 2001

Ms. Magalie Roman Salas  
Federal Communications Commission  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: BOC Joint Motion Regarding Unbundled Network Elements  
CC Docket No. 96-98

**Comments of Enron Broadband Services, Inc.**

Dear Ms. Salas:

Enclosed please find an original and seven copies of Comments of Enron Broadband Services, Inc. in the above referenced docket. Copies of these comments have also been forwarded to the attached list.

If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

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Enclosures

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List A B C D E

**ENRON BROADBAND SERVICES**  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Local Telecommunications	)	
Act of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and	)	
Verizon for Elimination of Mandatory	)	
Unbundling of High-Capacity Loops and	)	
Dedicated Transport	)	

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**JUN 11 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**COMMENTS OF ENRON BROADBAND SERVICES, INC.**

Enron Broadband Services, Inc. ("EBS") submits these comments in response to the Public Notice<sup>1</sup> in the above-captioned proceeding.<sup>2</sup>

**INTRODUCTION**

Enron Broadband Services ("EBS"), a wholly-owned subsidiary of Enron Corp. ("Enron"), is creating an open market for bandwidth and telecommunications services and offers customized broadband solutions to customers. EBS offers broadband intermediation services<sup>3</sup> that allow carriers, network providers and businesses to better manage their capacity and risk.

Enron is a world leader in making markets for commodities, such as bandwidth, in order to deliver them at a predictable price. Enron believes in the economic benefits and price transparencies of open, competitive wholesale markets, and plays a leading role in creating them.

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<sup>1</sup> *Public Notice*, CC Docket No. 96-98, DA 01-1041 (rel. Apr. 23, 2001).

<sup>2</sup> Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, CC Docket No. 96-98, (filed Apr. 5, 2001) ("Joint Petition").

<sup>3</sup> Intermediation services refers to the position EBS is taking in the telecommunications marketplace as both a buyer and seller of bandwidth capacity and bandwidth services.

Consistent with Enron's intermediation and commodities market-making activities, EBS' business premise is focused on the development of the bandwidth market and broadband applications and services that promote the use, availability, and (therefore) the commoditization, of bandwidth. Enron believes that an open market and transparent prices will lead to wider availability and reduced costs for bandwidth services that will benefit all communications consumers. This goal can best be achieved through completely open markets for bandwidth and bandwidth-intensive applications.

One of the fundamental objectives of the Telecommunications Act of 1996<sup>4</sup> was to stimulate competition, thereby accelerating the deployment of advanced services, in all sectors of the telecommunications industry. Today, EBS along with several other new telecommunications market entrants<sup>5</sup> is on the crest of creating a vibrant, competitive bandwidth trading market.

EBS controls a global fiber optic network — the Enron Intelligent Network (EIN) — that enables delivery of high quality and efficient bandwidth capacity solutions. Embedded within EBS' network is a scalable network control system that allows rapid switching and circuit provisioning capabilities. Through this system, EBS can deliver capacity with new service level options that guarantee the quality of service and performance that the customer desires and is willing to pay for. Additionally, EBS also is committed to increasing provider accountability by making the customer whole through liquid damages or compensation whenever EBS fails to perform.

EBS has established Pooling Points in more than 25 cities worldwide—18 in the

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<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 151 *et seq.* (West Supp. 1997).

<sup>5</sup> Other new entrants engaged or with plans to engage in bandwidth trading include Williams Communications, Dynegy, Koch, El Paso Global Networks, Cable and Wireless, Reliant, Aquila, LighTrade, RateExchange, and Global Crossing.

U.S.—that provide an interconnection and switching platform for providers and consumers of bandwidth capacity. This pooling point network gives customers access to numerous buyers and sellers to enable choice of bandwidth products, storage and other capacity transactions at guaranteed service levels. Buyers gain price flexibility and scalability for their own networks, and sellers can gain better control of their assets in a volatile market.

A pioneer in the creation of the bandwidth market since 1999, Enron completes hundreds of bandwidth transactions each month with numerous counterparties, including network service providers, carriers, other market makers and businesses.

Enron has moved beyond the traditional bandwidth marketplace of closed networks, “best efforts” delivery, slow provisioning, and inefficient price discovery. Enron has created a new, open model for the bandwidth market. This model consists of interconnected networks, contracts that ensure firm service delivery, dynamic real-time provisioning, and transparent prices. Consumers will demand higher quality services and instantaneous access. Innovators, such as EBS, are the companies that can deliver. The ultimate victory of the Telecommunications Act will not be in replicating the same-old products and service quality that consumers received from the incumbent carriers, but to change the face of telecommunications services and bring those services in line with the high-speed, digital demands of the 21<sup>st</sup> century.

Interconnection at pooling points, such as EBS’ Pooling Point Network, is feasible among other carriers, traders and large consumers of bandwidth. However, most customers can still only be reached through accessing the incumbent’s network. Too often, third-party provisioning is not an option to reach customers and—because of the need for high-capacity circuits (most bandwidth trades are of DS-3 capacity or higher)—EBS’ only option is to reach its customers through ILEC special access services. Because these services do not yet

have significant facilities or price competition in most – if not all - MSAs, they are usually the most expensive part of any transaction. Many new competitive entrants, including EBS, are beginning to enter the local market to overcome this problem. While EBS and others are deploying their own network access facilities into the local market, wholesale UNE access is still a critical component for new competitors. Access to high-capacity UNEs offers the best mechanism to bring both new facilities and price competition to the access services market, and thus extend the reach of the burgeoning bandwidth trading market.

Enron is committed to developing this new market structure where truly open networks allow consumers to pay for transparent products and services and allow them to buy their bandwidth on-demand. This is the vision of EBS—shared by many counterparties—and the future of the competitive telecommunications marketplace. It is with that future in mind that EBS enters this proceeding.

## ANALYSIS

### **I. THE JOINT PETITION IS BOTH PREMATURE AND THE WRONG VEHICLE FOR RECONSIDERING THE COMMISSION'S UNBUNDLING RULES**

The RBOC Joint Petition now before the Commission circumvents the timelines and market certainty prescribed in the *UNE Remand Order*.<sup>6</sup> New local market entrants, such as EBS, rely on the steady hand of regulators to provide a clear roadmap towards open, competitive markets and to send strong signals that foreshadow regulatory change. In creating the national UNE list that ILECs must unbundle<sup>7</sup>, the Commission provided such a roadmap for new competitive entry. The Commission also provided stability and signals for when to expect

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<sup>6</sup> *Implementation of the Local Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“*UNE Remand Order*”) ¶¶130, 149 & 151.

<sup>7</sup> *UNE Remand Order*, ¶¶118-162; 47 C.F.R. § 51.319.

possible regulatory change in stipulating a certain timeframe for periodic review of the UNE list. By filing the Joint Petition, the RBOCs are undermining the Commission's well-crafted framework for competition by creating yet another regulatory policy battle that causes industry confusion and continues to stretch the scarce resources of their smaller competitors. The Commission should resist this tactic. The issues raised in the Joint Petition are of profound significance and should be reviewed in the context of a much more comprehensive triennial review that examines and develops an appropriate record regarding the use of and necessity for unbundled access to high-capacity loops and transport facilities by competitors rather than in response to this *ad hoc* petition which is little more than an attempt to end-run the Commission's ongoing review in this same docket regarding the use of UNEs and UNE combinations necessary to provide exchange access. A positive decision by the Commission on this narrow petition without consideration of all the factors that weigh into competitive entry into this market would have a severe and deleterious effect on local facilities-based competition in total.

**A. The UNE Remand Order Correctly Identified The ILECs' Statutory Unbundling Obligations**

The Commission developed sound principles for entry by new competitors in its *UNE Remand Order*. The facilities described were not limited to just narrowband or voice, but all facilities were considered and added to the UNE list. While ILECs have continually shown their displeasure with this result, new competitors have designed networks and businesses around UNE availability. It is important for the Commission to note that EBS as a competitive entrant does not seek to be a "free rider," nor does it intend to compete with other LECs without its own facilities. In fact, EBS is developing numerous points of metro connectivity (Pooling Points)

across the U.S.<sup>8</sup> It is also clear, however, that incumbents are often the only viable providers of high-capacity circuits and it is the coercion towards and the domination of the special access services market that the petitioners seek to enshrine in this proceeding. EBS whole-heartedly agrees with the Commission's conclusion that there will occur many instances where, "neither self-provisioning loops nor obtaining loops from third party sources is a sufficient substitute to the [ILEC's network]."<sup>9</sup> The Commission has rightly acknowledged the realities of serving customers in this industry and its findings are just as true today as when they were written eighteen months ago.

**B. Approval Of the Joint Petition Outside Of Time Intervals Set By the Commission Will Create Unnecessary Market Uncertainty And Disruption**

As consumer demand for broadband services grows, so does the need for access to high-capacity UNE loops and transport. Today, EBS is seeking CLEC authority in a number of states and the District of Columbia specifically to interconnect its own facilities to the incumbents' network to extend the reach and addressable market for broadband services and applications. EBS is not alone. Several competitive entrants presently are following similar business models and all are moving forward in reliance upon the regulatory regime the Commission has established in the *UNE Remand Order* and in the seminal *Local Competition Order*<sup>10</sup>. The Commission's commitment to reexamining the UNE list every three years<sup>11</sup> provides certainty and stability to all industry participants. The Petitioners blatantly disregard this commitment with no reasonable justification of why their petition deserves consideration

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<sup>8</sup> EBS has established Pooling Points in Atlanta, Boston, Chicago, Dallas, Denver, Houston, Las Vegas, Los Angeles, Miami, New Orleans, New York, Philadelphia, Portland, Salt Lake City, San Francisco, San Jose, Seattle, and Washington D.C.

<sup>9</sup> *UNE Remand Order*, ¶¶ 165 & 321.

<sup>10</sup> *Implementation of the Local Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996).



outside of the three-year timeline or why the Commission should act expeditiously, offering only vague argument that the Commission should do so to ensure compliance with section 251(d)(2) of the Act. Such a compliance examination is exactly what the Commission already intends to do in its triennial review of the UNE list.

EBS supports the timeline commitment by the Commission to review the UNE list every three years and urges that this commitment be recognized and kept by all parties. A failure to do so would cause significant and unnecessary uncertainty in the marketplace and would advantage only the Petitioners.

## **II. THE COMMISSION SHOULD NOT CONSIDER THE JOINT PETITION INDEPENDENT OF OTHER RELATED PROCEEDINGS**

The Petitioners' request to have one set of facilities removed from the UNE list independent of consideration for all ILEC facilities is unreasonable and unsound. The Commission echoed this sentiment in its *UNE Remand Order*.<sup>11</sup> Through their Joint Petition, the Petitioners continue their efforts to seek to create two distinct classes of telecommunications facilities – those that are high capacity and those that are slower, older, legacy elements. This is inconsistent with the fundamental goal of the Act to promote competition and innovation in all telecommunications markets and to facilitate the deployment of advanced services. In fact, any removal of high-capacity loops and transport from the UNE list would mark a retreat from competition. Wherever customer reach is beyond their own facilities, competitive entrants -- who plan to provide high-speed data and other advanced services -- would be forced to purchase above-cost special access services from incumbents. Such a turn of events would intrinsically

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<sup>11</sup> *UNE Remand Order*, ¶¶ 130 & 151.

<sup>12</sup> *UNE Remand Order*, ¶63 (“We are not persuaded by the incumbents’ argument that we must look at each element in isolation to determine whether or not that element independently satisfies section 251(d)(2)”).

and substantially force a re-cast of the economic and business models that new competitors such as EBS are currently deploying into the marketplace. The financial markets will react with punishing results for midstream changes of the few remaining competitive players.

In today's telecommunications marketplace network design and equipment deployment represent a massive portion of a new enterprise's capital expenditures.<sup>13</sup> Access to, and use of UNEs are a major factor in the design, development, and deployment of competitive networks. Even for the most robust facilities-based competitors, UNE availability is a critical consideration in the implementation of many new business plans and local market strategies.<sup>14</sup>

The Commission risks causing enormous harm to new competitive entrants and new market models -- such as Bandwidth Trading -- by considering the Joint Petition in isolation of the many other proceedings now before the Commission. Many factors go into a competitor's appraisal of its own local network needs including, but not limited to, market size, number of competitors, collocation, high-capacity circuit availability, and quality of Interconnection Agreements with incumbents. The Commission is currently examining many of the issues that will directly affect competitive entrants and incumbents alike in several separate proceedings. This Joint Petition before the Commission now creates yet another occasion for regulatory decisions to profoundly impact a market that desperately needs certainty and predictability. Surely, the Commission would rather see competition itself determine the successes of individual

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<sup>13</sup> Without access to high-capacity loop and transport UNEs at TELRIC-based prices, these costs would be even greater. Moreover, many CLECs currently have limited access to capital necessary to build, even if such a build economically could be justified, and instead must rely on one of the two other methods of entry -- resale or UNEs -- established by Congress. *See, e.g.,* AT&T Reply Comments on Use of Unbundled Network Elements to Provide Exchange Access, CC Docket No. 96-98, at 12-14 (describing CLEC financial difficulties and the current view of the investment community) and n. 27 (describing the difficulty of attracting "internal capital" that may be denied in favor of projects with higher expected returns or lower risks) (filed Apr. 30, 2001).

<sup>14</sup> *See, e.g., id.*, ¶¶29-36.

enterprises, not artificial regulatory events.

EBS' particular concern here is that the Joint Petition has the ability to undermine and render moot numerous issues that are currently under debate at the Commission. The Commission should look beyond the narrow scope of the Joint Petition and consider the affect of granting the Joint Petitioners' request on any of the following pending or recently decided proceedings:

- ◆ Collocation – The Commission currently has before it various collocation rules on remand from the DC Circuit and is considering implementing additional national collocation guidelines. Although the Commission correctly has recognized the critical importance of collocation to successful and robust local competition, the “relief” sought here by the Petitioners would render collocation virtually useless to Enron and most other facilities-based competitors.
- ◆ Pricing Flexibility – On the basis of a lenient standard quite distinct from the statutory “necessary and impair” standard applicable to UNEs, the Commission has awarded Pricing Flexibility to ILECs in most major MSAs. While the Petitioners claim that plenty of facilities-based competition exists for high-capacity facilities, this is belied by the fact that they have to date demonstrated little need to use Pricing Flexibility to competitively price special access services. The Commission should look at the utilization of the competitive tools the Petitioners already have been granted before consideration of whether incumbent facilities should be removed from the UNE list.
- ◆ EEL Availability – As noted above, the Joint Petition is a thinly veiled attempt to render moot the Commission's ongoing review regarding the use of UNEs to provide exchange access services. The Joint Petition underscores that the ILECs' desire to protect inflated special access revenues (much of which is the result of their success in restricting access to UNEs) has no bearing on the Act's unbundling obligations or the Commission's interpretation of them.
- ◆ ILEC Sec. 271 Approvals – The Commission must also continue to examine UNE availability and its effect on local competition in conjunction with ILEC applications for long-distance entry. In its latest data release on local competition, the Commission noted the growth of competition in states where ILEC's have been granted 271 approval.<sup>15</sup> It is no coincidence that competition is most robust in states where the FCC has found general compliance with its unbundling rules. This is strong evidence that the

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<sup>15</sup> FCC Releases Latest Data On Local Telephone Competition, News Release, at 1 (May 21, 2001); Local Telephone Competition: Status as of December 31, 2000, CCB Industry Analysis Division Report (rel. May 21, 2001).

elimination of unbundling obligations – particularly the high-capacity loop and transport elements targeted by the ILECs here – as having the potential to erode their special access rents if properly implemented – would inhibit the development of local competition and the deployment of bandwidth capable of delivering advanced services.

The Commission should not make decisions of this magnitude in a vacuum. In order for the Commission to fully understand the consequences of the Petitioners' request, the Commission must look beyond the Joint Petition itself and look to the cumulative impacts on competition that an affirmative decision would have in conjunction with all the other proceedings regarding implementation of the local competition provisions of the Telecommunications Act of 1996. As stated above, the proper venue for such an endeavor is the Commission's prescribed triennial UNE review.

### **III. CONCLUSION**

For the foregoing reasons, the Commission must deny the Joint Petition and continue to follow the already prescribed timelines it has set out in the *UNE Remand Order*.

Respectfully submitted,

ENRON BROADBAND SERVICES, INC.

By:

A handwritten signature in black ink, appearing to read "Scott Bolton", is written over a horizontal line.

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June 11, 2001

**CERTIFICATE OF SERVICE**  
**CC Docket No. 96-98**

I, \_\_\_\_\_, hereby certify that copies of the foregoing Comments of Enron Broadband Services were served on \_\_\_\_\_ via \_\_\_\_\_ on the following persons.

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